

CONDITION 46

PRIVATE CIRCUITS

46.1 Following the application of any public telecommunications operator for Private Circuits of a description which that operator is authorised by a licence to provide the Licensee shall, in accordance with Condition 1, provide Private Circuits to that operator, unless the Director is satisfied:

- (a) as to the matters described in Condition 1.1; or
- (b) that the public telecommunications operator in question would be unduly reliant upon services provided by the Licensee as a means of satisfying his obligations under his licence;

and Condition 13 shall not apply in respect of any such application as is mentioned in this paragraph.

46.2 Where pursuant to Condition 16 the Licensee has published standard charges for Private Circuits of certain descriptions and proposes to provide Private Circuits of different or similar descriptions to an operator under this Condition and has published charges ("the specific charges") for such Private Circuits, the following provisions shall apply.

46.3 (a) If on an application by a public telecommunications operator the Director is satisfied that the public telecommunications operator has established a prima facie case that any specific charge is unreasonable the Director may, if he considers it necessary to do so, determine that the licensee shall modify that charge in such a way as to make it reasonable; provided that the licensee shall not be deemed to have acted unreasonably merely by virtue of having proposed the charge in question.

(b) Before making a determination under paragraph 46.3 (a) the Director shall notify to the Licensee the grounds of the public telecommunications operator's application and his conclusions thereon and the modification he proposes to make or require the Licensee to make, and shall afford the Licensee adequate time, being not less than 28 days, in which to make representations.

46.4 (a) Subject to the terms of this paragraph 46.4 any charge determined under paragraph 46.3 (a) by the Director shall be determined by reference to the Licensee's usual charge ("the usual charge") for the provision to its customers generally of the usual service.

(b) Any charge determined under paragraph 46.3 (a) by the Director shall not be:

- (i) less than the usual charge for the usual service by an amount which exceeds any cost savings of the Licensee which are shown to be likely; or
- (ii) less than the usual charge for the usual service plus any additional costs of the Licensee which are shown to be likely.
- (c) In this paragraph 46.4 "costs" means fully allocated costs and a reasonable rate of return on capital employed.

46.5 Any published specific charge is not to be determined under paragraph 46.3 as being unreasonable just because it:

- (a) varies, as compared with the nearest applicable usual charge, with the cost to the Licensee of the provision of the Private Circuits concerned;
- (b) exceeds the Licensee's charges for Private Circuits of the same or a similar description provided to the generality of its customers; or
- (c) provides the Licensee with a rate of return which is no lower than that obtained by the Licensee in connection with the provision of Private Circuits of the same or a similar description to the generality of its customers.

46.6 Nothing in this Condition shall require the Licensee to:

- (a) deal with applications from public telecommunications operators in priority to other applications or otherwise discriminate in favour of public telecommunications operators; or
- (b) act in a way which is likely seriously to reduce the quality of service provided by the Licensee to the generality of its customers, in respect of any telecommunication service.

CONDITION 46A

RELEVANT PRIVATE CIRCUITS

46A.1 The Licensee shall provide a minimum set of Relevant Private Circuits in accordance with Schedule 2 to the Telecommunications (Leased Lines) Regulations 1993. The Licensee must ensure, if it provides other Relevant Private Circuits beyond the minimum set, that such provision does not impede the provision of the minimum set.

46A.2 The Licensee shall not terminate an existing offering of a Relevant Private Circuit unless:

- (a) the offering has continued for a reasonable period of time; and
- (b) the Licensee has consulted with the users affected.

Without prejudice to any other remedy or right of appeal which the user may have in law or pursuant to contract or these conditions, where the user does not agree with the termination date as envisaged by the Licensee, he may bring the case before the Director.

46A.3 The Licensee shall not take for reasons of the alleged failure of the user of a Relevant Private Circuit to comply with the usage conditions any measure (including, without prejudice to the generality of the foregoing, the refusal to provide a Relevant Private Circuit, the interruption of the provision of Relevant Private Circuits or the reduction of the availability of Relevant Private Circuit features) unless:

- (a) the measure is a specified measure authorised by the Director in the case of a defined infringement of usage conditions; or
- (b) the Licensee has been notified pursuant to regulation 7 (3) of the Telecommunications (Leased Lines) Regulations 1993 that the Director consents to the taking of the measure.

46A.4 The Licensee shall ensure that tariffs for Relevant Private Circuits follow the basic principles of cost orientation and transparency in accordance with the following rules:

- (a) tariffs for Relevant Private Circuits shall be independent of the type of application which the users of the Relevant Private Circuits implement;
- (b) tariffs for Relevant Private Circuits shall normally contain the following elements:
 - (i) an initial connection charge; and
 - (ii) a periodic rental charge, that is to say, a flat-rate element;

and when other tariff elements are applied, these must be transparent and based on objective criteria;

- (c) tariffs for Relevant Private Circuits apply to the facilities provided between Network Termination Points at which the user has access to the Relevant Private Circuits.

For Relevant Private Circuits provided by more than one telecommunications organisation, half-circuit tariffs, that is to say, from one Network Termination Point to a hypothetical mid-circuit point, can be applied.

46A.5 The Licensee shall formulate and put in practice, by 31st December 1993 at the latest, a cost accounting system suitable for the implementation of paragraph 46A.4. Without prejudice to the generality of the foregoing, that system shall include the following elements:

- (a) the cost of Relevant Private Circuits shall in particular include the direct costs incurred by the Licensee for setting up, operating and maintaining them, and for marketing and billing them; and
- (b) common costs, that is to say, costs which can neither be directly assigned to Relevant Private Circuits nor to other activities, are allocated as follows:
 - (i) whenever possible, common cost categories shall be allocated based upon direct analysis of the origin of the costs themselves;
 - (ii) when direct analysis is not possible, common cost categories shall be allocated based upon an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible, and such indirect linkage shall be based on comparable cost structures;
 - (iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated based upon a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated, on the one hand, to Relevant Private Circuits and, on the other hand, to other services.

After 31st December 1993, other cost accounting systems may be applied only if they are suitable for the implementation of paragraph 46A.4 and have as such been approved by the Director for application by the Licensee.

CONDITION 47

PROHIBITION OF EXCLUSIVE DEALING IN INTERNATIONAL SERVICES

- 47.1 The Licensee shall not enter into any agreement or arrangement with any person running an Authorised Overseas System on terms or conditions which unfairly preclude or restrict the provision by another public telecommunications operator of International Connection Services.
- 47.2 The Licensee shall not unreasonably exclude any other public telecommunications operator who is authorised by a Licence to connect his system to another telecommunication system situated outside the United Kingdom so as to convey Messages to that other system from a reasonable opportunity to participate in any international arrangements into which it proposes to enter after the date on which this Licence enters into force for the installation and operation of any submarine cable linking any of the Applicable Systems to any telecommunication system outside the United Kingdom.

CONDITION 48

OTHER ARRANGEMENTS FOR INTERNATIONAL SERVICES

- 48.1 Subject to paragraph 48.2 the Licensee shall consult from time to time with the Director and with other persons authorised to provide International Connection Services with a view to agreeing with them a Code of Practice in respect of international accounting arrangements which are to apply in respect of such Services provided by the Licensee and those persons and shall abide by the terms of that Code of Practice as agreed for the time being. If no such Code of Practice is agreed on 30 September 1984 or at any time thereafter its terms shall be such as the Director may determine.
- 48.2 Where the Director is of the opinion that the Licensee proposes to enter into or vary an agreement or arrangement with a person running a telecommunication system outside the United Kingdom with a view to the provision of International Connection Services, being an agreement or arrangement establishing international accounting methods, rates and divisions, which would prejudice the interests of providers and users of International Connection Services in the United Kingdom, and where the Director, within 28 days of the matter being brought to his notice, and after consultation with the Licensee and any other public telecommunications operator authorised to provide such Services, and after taking account of the provisions of the Code of Practice, directs the Licensee that it should not enter into or so vary that agreement or arrangement, then the Licensee shall refrain from doing so.

CONDITION 49

PRE-NOTIFICATION OF JOINT VENTURES

- 49.1 Unless the Director otherwise agrees the Licensee shall notify the Director not later than 30 days before the taking effect of any of the agreements or arrangements to which this Condition applies giving particulars of those agreements or arrangements.
- 49.2 Those agreements and arrangements are:
- (a) an agreement with any person for the establishment or control of any body corporate for the purpose of:
 - (i) the running of a telecommunication system which requires a Licence; or
 - (ii) providing telecommunication services in the United Kingdom which necessarily involve the running of such a system; or
 - (iii) the production of telecommunication apparatus for supply in the United Kingdom where that production would lead to a monopoly situation which would not otherwise exist in relation to the supply of telecommunication apparatus of any description in the United Kingdom;
 - (b) an agreement for the establishment of a partnership for any of those purposes and in those circumstances;
 - (c) any other agreement or arrangement in the nature of a joint venture for the purpose of running a telecommunication system which requires a Licence or for the purpose of providing telecommunication services in the United Kingdom which necessarily involve the running of such a system.
- 49.3 Paragraphs 49.2 (a) and (b) apply in relation to an agreement or arrangement for the establishment or control of any body corporate or partnership where the Licensee has or is to have not less than 20 per cent. of the voting power in any organ controlling that body.
- 49.4 For the purposes of this Condition a monopoly situation shall be taken to exist where such a situation would be taken to exist for the purpose of any of the provisions of section 6 of the Fair Trading Act 1973 but with the substitution of the words "one fifth" for the words "one quarter" whenever they appear in that section.
- 49.5 In any case where circumstances beyond the Licensee's control require him to enter into an agreement or arrangement, if he is to enter into it at all, without having made a notification in accordance with paragraph 49.1 he

shall notify the Director as soon as reasonably practicable but otherwise in accordance with the provisions of this Condition.

CONDITION 50

ASSOCIATES

50.1 Without prejudice to the Licensee's obligations under these Conditions in respect, in particular, of anything done on its behalf, where:

- (a) any Associate of the Licensee does anything which the Licensee is prohibited from doing under these Conditions or fails to do anything which the Licensee is in the circumstances required to do; and
- (b) the Director is of the opinion:
 - (i) that in consequence the Licensee is seeking to or is in a material and substantial way avoiding obligations which would apply under these Conditions if the thing had been done or not done by the Licensee; and
 - (ii) that, having regard to the duties imposed on him by section 3 of the Act he ought to make a direction under this Condition;

then the Licensee shall take such reasonable steps to ensure that the Associate ceases to do that thing or otherwise to remedy the matter as the Director directs him to take.

50.2 Where these Conditions apply in respect of the Applicable Systems they do not apply in respect of any other telecommunication system, whether run by the Licensee or another.

50.3 Where any person becomes an Associate of the Licensee, then the Licensee shall not be subject to paragraph 50.1 before that is reasonably practicable but shall be so not later than one year after that person becomes such an Associate or such later date as the Director may determine.

50.4 This Condition shall not apply to any particular Associate if and to the extent that the Director so determines.

50.5 For the purposes of this Condition a person is an Associate of the Licensee if he is a Subsidiary of, or another body corporate controlled by, it.

CONDITION 51

PAYMENT OF FEES

51.1 The Licensee shall pay the following amounts to the Secretary of State at the times stated:

- (a) on the grant of this Licence the sum of £2.75 million; and
- (b) on 1 April 1985 and annually thereafter a renewal fee which shall represent a fair proportion, to be determined each year by the Director according to a method that has been disclosed to the Licensee, of the estimated costs to be incurred in that fiscal year by the Director in the regulation and enforcement of telecommunication licences and in the exercise of his other functions under the Act; and
- (c) where the Director so determines, on 1 January 1988 and annually thereafter a special fee which shall represent a fair proportion, to be determined each year by the Director according to a method that has been disclosed to the Licensee, of that amount, if any, by which the aggregate of:
 - (i) the costs estimated to have been already incurred in that fiscal year by the Director in the regulation and enforcement of telecommunication licences and in the exercise of his other functions under the Act; and
 - (ii) the costs estimated to have been already incurred in that fiscal year by the Monopolies and Mergers Commission following licence modification references under section 13 of the Act; and
 - (iii) the estimated costs to be incurred in the remainder of that fiscal year:
 - (A) by the Director in the regulation and enforcement of telecommunication licences and in the exercise of his other functions under the Act; and
 - (B) by the Monopolies and Mergers Commission following licence modification references under section 13 of the Act;

exceeds the renewal fee for that year;

save always that the aggregate of the renewal fee and the special fee for any fiscal year shall not exceed 0.08 per cent. of the annual turnover of the Licensee's Systems Business in the financial year before the last complete financial year of the Licensee before the renewal fee is payable.

CONDITION 52

REQUIREMENT TO FURNISH INFORMATION TO THE DIRECTOR

- 52.1 The Licensee shall furnish to the Director, in such manner and at such times as the Director may request, such documents, accounts, estimates, returns or other information and procure and furnish to him such reports as he may reasonably require for the purpose of exercising the functions assigned or transferred to him by or under Parts II and III of the Act.
- 52.2 In making any such request the Director shall ensure that no undue burden is imposed on the Licensee in procuring and furnishing such information and, in particular, that the Licensee is not required to procure or furnish a report which would not normally be available to it unless the Director considers the particular report essential to enable him to exercise his functions.

CONDITION 53

EXCEPTIONS AND LIMITATIONS ON OBLIGATIONS IN SCHEDULE 1

- 53.1 Unless the context otherwise requires and subject to paragraph 53.12, the Licensee's obligations under these Conditions have effect subject to the following exceptions and limitations.
- 53.2 The Licensee is not obliged to do anything which is not practicable.
- 53.3 Subject to paragraph 53.3A, the Licensee shall not be held to have failed to comply with an obligation imposed upon it by or under these Conditions if and to the extent that the Licensee is prevented from complying with that obligation by any physical, topographical or other natural obstacle, by the malfunction or failure of any apparatus or equipment, by the act of any national authority, Local Authority or international organisation or as the result of fire, flood, explosion, accident, Emergency, riot or war.
- 53.3A In relation to Relevant Private Circuits, the Licensee shall not be held to have failed to comply with these Conditions if the Licensee takes the following measures in order to safeguard the security of network operations during the period when an emergency situation prevails:
- (a) the interruption of the service;
 - (b) the limitation of service features; or
 - (c) the denial of access to the service;
- provided that the following conditions are satisfied:
- (i) the Licensee makes every reasonable endeavour to ensure that service is maintained to all users; and
 - (ii) the Licensee takes as soon as reasonably possible all reasonable steps to notify the users and the Director of the beginning and the end of the emergency as well as the nature and extent of temporary service restrictions;
- and in this paragraph, an emergency situation means an exceptional case of force majeure, which, without prejudice to the generality thereof, includes extreme weather, flood, lightning or fire, industrial action or lockouts, war, military operations, or civil disorder.
- 53.4 The obligation to provide any voice telephony service shall not apply:
- (a) where there is no reasonable demand for it;
 - (b) where provision of the service requested would expose any person engaged in its provision to undue risk to health or safety;

- (c) where the Licensee is unable to obtain (either because it has not been developed or for some other reason beyond the Licensee's control) anything necessary to provide a service of the quality or standard required by the person who requests the provision of the service and, in the event of dispute, the Director's decision as to whether anything is necessary shall be final;
- (d) where the person to whom the Licensee would otherwise be under an obligation to provide any service requests a service at a place in which the apparatus necessary to provide that service in that area has not been installed (or in which the installation of such apparatus has not been completed) or as the case may be such apparatus has not been adapted or modified to make it capable of providing the service of the kind requested or the trained manpower necessary to provide the service is not available in that area, provided that in every case where the Licensee declines to provide a service to which this sub-paragraph relates it shall have published, or furnished to the Director, or within 28 days (or such longer period as the Director considers reasonable) following receipt by it of the request that service be provided shall have furnished to the Director, proposals for:
 - (i) progressively installing or completing the installation or for the adaptation or the modification of the apparatus; or
 - (ii) the allocation of the trained manpower necessary for the provision of that service in that area and the Director has not determined that those proposals are unreasonable or are not being effectively carried out; or
- (e) where in the opinion of the Director it is not reasonably practicable in all the circumstances for the Licensee to provide the service requested at the time or place demanded.

53.5 The obligation to provide any telecommunication service other than a voice telephony service shall not apply:

- (a) where any of the circumstances described in paragraph 53.4 (a) to (e) apply; or
- (b) where the person to whom the Licensee would otherwise be under an obligation to provide any service requests a service at a place in an area in which the demand or the prospective demand for the service is not sufficient, having regard to the revenue likely to be earned from the provision of the service in that area, to meet all the costs reasonably to be incurred by the Licensee in providing the service there, including:
 - (i) the cost of apparatus necessary for the provision of the service there;

- (ii) the cost of installing, maintaining and operating such apparatus for the purpose of providing the service there; and
- (iii) the cost of the trained manpower necessary to provide the service there.

53.5A (a) The obligation to provide means of access to a Relevant Service in conformance with an OSI Standard shall not apply where:

- (i) the Licensee is unable to obtain (either because it has not been developed or for some other reason beyond the Licensee's control) anything necessary to provide such means of access; or
- (ii) the Licensee is unable, for any reason beyond its control, to install apparatus necessary to provide such means of access or to adapt or modify that apparatus for the purpose; or
- (iii) the Director so agrees, having regard to the extent to which the provision of the means of access would not for the time being promote the interests of consumers of telecommunication services provided by the Licensee (including consumers of such services where the Licensee is not obliged to provide means of access which conform to an OSI Standard to those services).

(b) The exception in sub-paragraph 53.5A (a) (ii) shall not apply where the Licensee has declined to provide means of access to a Relevant Service for any reason given in that sub-paragraph unless:

- (i) within 28 days of first receiving a request to provide such means of access, (or such longer period as the Director considers reasonable) it submits proposals for installing, adapting or modifying the apparatus so as to provide such means of access within a reasonable time; and
- (ii) those proposals are reasonable and are being effectively carried out.

53.5B Nothing in these conditions shall prevent the Licensee, where it considers it unreasonable to provide a Relevant Private Circuit in response to a particular request under its tariffs and supply conditions published pursuant to paragraph 16.3B, from varying those conditions in that case with the consent of the Director.

53.6 The Licensee shall not be obliged to supply, connect, or to keep connected to any of the Applicable Systems, or to permit to be so connected or kept connected any telecommunication system or telecommunication apparatus or to provide telecommunication services if the person to or for whom that is or is to be done:

- (a) has not entered or will not enter into a contract for the purpose with the Licensee for reasons other than the unreasonable refusal of the Licensee to agree terms for the purpose but this paragraph does not apply in a case where the Director is satisfied that:
 - (i) the Licensee has not published standard terms and conditions which it proposes to apply for the purpose in question, or the transaction is not fit to be governed by such terms and conditions; and
 - (ii) the Licensee has unreasonably refused to agree terms and conditions for the purpose;
- (b) is, or in the Director's opinion has given reasonable cause to believe that he may become:
 - (i) in breach of a contract with the Licensee for the provision of telecommunication services or for the supply of telecommunication apparatus or a telecommunication system supplied by the Licensee; or
 - (ii) in default in regard to any debt or liability owed to the Licensee in respect of any such contract;
- (c) is using, or permitting the use of, apparatus so supplied for any illegal purpose or has done so in the past and is likely to do so again; or
- (d) has obtained, or attempted to obtain, any telecommunication apparatus or telecommunication service from the Licensee by corrupt, dishonest or illegal means at any time.

53.7 Nothing in these Conditions shall prevent the Licensee from withdrawing from, or declining to provide to, any person any telecommunication service which the Licensee has notified the Director that it is providing in a limited area, or to a limited class of customers, for the purpose of evaluating the technical feasibility of, or the commercial prospects for, that service.

53.8 Nothing in these Conditions shall require the Licensee to supply any telecommunication apparatus or to provide any telecommunication service, or to supply or to provide any telecommunication apparatus or service of any particular class or description, if he supplies or provides instead apparatus or a service, or apparatus or a service of a class or description, which satisfies the purposes of that requirement at least to the same extent.

53.9 This Condition shall apply without prejudice to any limitation or qualification of the requirements imposed by or under any other Condition.

53.10 Nothing in these Conditions shall prevent the Licensee from withdrawing or restricting any service requiring the attendance of any of its employees:

- (a) on Bank Holidays and other public or statutory holidays (but so that, where any such holiday is observed only in a part of the Licensed Area, this sub-paragraph shall apply in respect of that holiday to that part only); or
- (b) on any other day on which the Director determines it is unreasonable to require the relevant employees of the Licensee to attend for the purpose of providing those services.

53.11 The Licensee shall be relieved of any obligation under these Conditions by virtue of a combination of any of the events and circumstances set out in the preceding paragraphs of this Condition, insofar as those paragraphs apply to the obligation in question; or a combination of any such events and circumstances and any limitation or exception contained in the Condition in question.

53.12 This Condition does not apply to Conditions 13, 15.6, 17, 19, 22, 24, 24A, 28, 29.1, 30.1, 35, 36, 38.1, 38A.1, 39, 40, 46A.3 to 46A.5 and 47 and:

- (i) only paragraphs 53.1, 53.2, 53.3, 53.9 and 53.11 apply to Conditions 16, 16B, 17B, 17C, 18, 20, 20B, 21, 23, 24F, 25, 26, 27, 29.2, 30.2 and 30.3, 31, 32, 37, 38.2, 41, 41A, 44, 45, 48, 49, 51 and 52;
- (ii) only paragraphs 53.1, 53.6 (a), 53.9 and 53.11 apply to Condition 9.2;
- (iii) only paragraphs 53.1, 53.2, 53.3, 53.6, 53.9 and 53.11 apply to Condition 11.6 and 34;
- (iv) only paragraphs 53.1, 53.2, 53.3, 53.9 and 53.11 apply to Condition 50;
- (ivA) only paragraphs 53.1, 53.2, 53.3, 53.5A, 53.9 and 53.11 apply to Condition 40A;
- (v) only paragraphs 53.1, 53.2, 53.3, 53.4 (b), 53.6 (a), 53.9 and 53.11 apply to Conditions 6 and 7; and
- (vi) only paragraphs 53.1, 53.2, 53.3, 53.4 (b), 53.9 and 53.11 apply to Conditions 8, 11 (except 11.6) and 33;

but paragraphs 53.4 (a), 53.4 (d) and 53.5 (b) do not apply to Condition 10 and paragraphs 53.6 and 53.8 do not apply to Condition 9.1.

53.13 Notwithstanding paragraph 53.12, Conditions 22, 41 and 43 shall not come into operation until 1 November 1984; and Conditions 16.1 (a) (v) and 17.1 (e) and 44 shall not come into operation until 1 October 1984.

SCHEDULE 2: REVOCATION

1 Notwithstanding paragraph 3 of the Licence the Secretary of State may at any time revoke this Licence by 30 days' notice in writing given to the Licensee at its registered office in any of the following circumstances:

- (a) if the Licensee agrees in writing with the Secretary of State that this Licence should be revoked;
- (b) if any amount payable under Condition 51 of Schedule 1 is unpaid 30 days after it becomes due and remains unpaid for a period of 14 days after the Secretary of State notifies the Licensee that the payment is overdue, such notification not to be given earlier than the sixteenth day after the day on which the payment became due;
- (c) if the Licensee fails to comply with a final order (within the meaning of section 16 of the Act) or a provisional order (within the meaning of that section) which has been confirmed under that section and that order is not subject to proceedings for review and such failure is not rectified within 3 months after the Secretary of State has given notice in writing of such failure to the Licensee such notice being given after the conclusion of any such proceedings;
- (d) if, pursuant to section 60 of the Act the property, rights and liabilities of the Licensee become property rights and liabilities of a company nominated for the purposes of that section by the Secretary of State ("the Successor Company") and the Successor Company:
 - (i) is unable to pay its debts (within the meaning of section 223 of the Companies Act 1948), convenes any meeting with its creditors generally with a view to the general readjustment or re-scheduling of its indebtedness or makes a general assignment for the benefit of its creditors generally;
 - (ii) enters into receivership or liquidation;
 - (iii) ceases to carry on its business; or
- (e) if the Successor Company or any other person takes any action for voluntary winding-up or dissolution of the Successor Company, or if the Successor Company enters into any scheme of arrangement (other than in any such case for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Secretary of State) or if a receiver, trustee or similar officer of the Successor Company, or of all or any material part of the revenues and assets of it, is appointed, or if any order is made for the compulsory winding-up or dissolution of it.

2 For the purposes of sub-paragraph (1) (d) (i) of this Schedule, in construing the terms of paragraph (a) of section 223 of the Companies Act 1948 the

figure of "£200" therein shall be deemed to be replaced by "£250,000" or such higher figure as the Director may determine and the said paragraph (a) shall not apply if the demand therein referred to is being contested in good faith by the Successor Company with recourse to all appropriate measures and procedures, whether legal or otherwise, or if the demand is satisfied prior to the expiry of the notice from the Secretary of State.

- 3 The Interpretation Act 1978 shall apply for the purpose of interpreting this Schedule as if it were an Act of Parliament.
- 4 Any word or expression used in this Schedule shall unless the context otherwise requires have the same meaning as it has in the Act.

SCHEDULE 3: AUTHORISATION TO CONNECT OTHER SYSTEMS AND APPARATUS TO THE APPLICABLE SYSTEMS AND TO PROVIDE TELECOMMUNICATION SERVICES BY MEANS OF THE APPLICABLE SYSTEMS

- 1 Nothing in this Licence removes any need to obtain any other licence that may be required under any other enactment but, subject to that limitation, this Licence authorises:
- (a) the connection to any Applicable System of:
 - (i) any other Applicable System;
 - (ii) any telecommunication system outside the United Kingdom except a telecommunication system which the Secretary of State has notified the Licensee should not, or as the case may be should cease to, be connected to the Applicable System;
 - (iii) any telecommunication system run by the Crown;
 - (iv) any telecommunication system in the Licensed Area the Licence for which authorises it to be connected to one or more of the Applicable Systems;
 - (v) any telecommunication system in the Hull Area situated in an aircraft, seagoing vessel or hovercraft or run by the Kingston upon Hull City Council or by another public telecommunications operator;
 - (vi) any telecommunication system of the kind mentioned in section 6 (1) of the Act;
 - (vii) telecommunication apparatus of every description which is comprised in an Applicable System;
 - (viii) telecommunication apparatus comprised in a telecommunication system mentioned in sub-paragraphs (i) to (vi) above;
 - (ix) any telecommunication apparatus not comprised in any of the Applicable Systems which is for the time being approved for connection to any of the Applicable Systems in accordance with section 22 of the Act; and
 - (x) any hearing aid;
 - (b) the provision by means of the Applicable Systems of telecommunication services consisting in:

(i) the conveyance (not including switching) of Messages (not including cable programme services sent under a licence granted under section 58 of the Act) and switching incidental to such conveyance; and

(ii) directory information services;

but not any Land Mobile Radio Service.

2 In this Schedule:

(a) "Hull Area" has the meaning given to it in Annex A;

(b) "Land Mobile Radio Service" means any telecommunication service provided by wireless telegraphy for reception by means of apparatus which is or is to be used while in motion, but does not include services of a kind provided under Conditions 8 and 12 of Schedule 1;

(c) "Licensed Area" means the United Kingdom other than the area in which the City of Kingston upon Hull is licensed to run telecommunication systems under a Licence coming into force on the date on which this Licence enters into force;

(d) "Message" means anything falling within paragraphs (a) to (d) of section 4 (1) of the Act;

(e) "seagoing vessel" includes any floating structure for the exploration for, or exploitation of, oil or gas, or similar structure, while it is not maintained on a station; and

(f) "United Kingdom" includes any area to which the provisions of the Act apply by virtue of section 107.

3 The Interpretation Act 1978 shall apply for the purpose of interpreting this Schedule as if it were an Act of Parliament.

4 Any word or expression used in this Schedule shall unless the context otherwise requires have the same meaning as it has in the Act.

SCHEDULE 4: OTHER EXCEPTIONS AND CONDITIONS RELATING TO THE APPLICATION OF THE TELECOMMUNICATIONS CODE

DEFINITIONS AND INTERPRETATION

- 1 In this Schedule unless the context otherwise requires:
- (a) “Duct” means a structure or apparatus (with appropriate entry points) installed underground in such a way that lines can be installed in it without having to break up the surface of the highway;
 - (b) the expressions “emergency works”, “maintainable highway”, “street” and “telecommunication apparatus” shall have the meanings given to them by paragraph 1 of Schedule 2 to the Act;
 - (c) “Highway Authority” means, in England and Wales, the highway authority as defined in section 1 of the Highways Act 1980, in Scotland, the highway authority as defined in section 50 of the Roads (Scotland) Act 1970 and, in Northern Ireland, the Department of the Environment for Northern Ireland;
 - (d) “line” shall have the meaning given to it by sub-paragraph (a) of the definition of “telecommunication apparatus” in paragraph 1 of Schedule 2 to the Act and “Service Line” shall mean any line placed or intended to be placed for the purpose of providing any telecommunication service to the occupier from time to time of any land, as distinct from lines placed or intended to be placed for the general purposes of any telecommunication system;
 - (e) “Planning Authority” means:
 - (i) in relation to England and Wales, the local planning authority for the area in question within the meaning of section 1 of the Town and Country Planning Act 1971;
 - (ii) in relation to Scotland, the general planning authority or the district planning authority for the area in question within the meaning of section 172 of the Local Government (Scotland) Act 1973;
 - (iii) in relation to Northern Ireland, the Department of the Environment for Northern Ireland.
- 2 The Interpretation Act 1978 shall apply for the purpose of interpreting this Schedule as if it was an Act of Parliament.
- 3 Any word or expression used in this Schedule shall unless the context otherwise requires have the same meaning as it has in the Act.

- 4 For the purposes of interpreting this Schedule headings and titles shall be disregarded.

CONDITION 1

CONSERVATION AREAS

- 1.1 Subject to paragraph 1.2 and except in the case of emergency works, any line installed by the Licensee after the date on which this Licence enters into force in any Relevant Area shall be installed underground and no pole shall be installed in any such area after that date.
- 1.2 Notwithstanding paragraph 1.1, nothing in this paragraph shall prevent the installation on or above the ground of:
- (a) a line or pole required temporarily for the purpose of emergency works;
 - (b) an overhead Service Line flown from a pole installed:
 - (i) before the date on which this Licence enters into force;
 - (ii) before the area was designated a conservation area; or
 - (iii) under sub-paragraphs (e) or (f) below;provided that the line is of a not noticeably larger diameter than that of the majority of the Licensee's overhead Service Lines in the same locality;
 - (c) an overhead Service Line flown from a building in a locality where overhead Service Lines attached to poles or buildings are already installed in adjacent streets or on neighbouring land by the Licensee for the purpose of providing telecommunication services, provided that the line is of a not noticeably larger diameter than that of the majority of such other overhead Service Lines;
 - (d) any other line replacing an existing line provided that the replacement line is of a not noticeably larger diameter than that of the line it replaces;
 - (e) a replacement pole in a position not substantially different from the pole it replaces;
 - (f) subject to paragraph 1.3, a pole (other than one mentioned in sub-paragraph (e) above) in a street or on neighbouring land where overhead Service Lines attached to poles are already installed by the Licensee in that street or on that neighbouring land for the purpose of providing telecommunication services;
 - (g) a Service Line affixed to and lying on the surface of the exterior structure of a building provided that the line is of a not noticeably larger diameter than the majority of service lines affixed to and lying

on the surface of the exterior structures of buildings in the same locality.

- 1.3 Before installing a pole under paragraph 1.2 (f) the Licensee shall give the Planning Authority written notice of its intention to do so describing the proposed works and shall consider any written representations made by the Planning Authority within 28 days of the giving of the notice.
- 1.4 In this Condition "Relevant Area" means:
- (a) in relation to England and Wales, the City of London or any area designated as a conservation area under section 277 of the Town and Country Planning Act 1971;
 - (b) in relation to Scotland, any area designated as a conservation area under section 262 of the Town and Country Planning (Scotland) Act 1972; and
 - (c) in relation to Northern Ireland, any area designated as a conservation area under Article 37 of the Planning (Northern Ireland) Order 1972.

CONDITION 2

LISTED BUILDINGS AND ANCIENT MONUMENTS

- 2.1 Except in the case of emergency works, the Licensee shall before installing lines, poles or other telecommunication apparatus in proximity to a building shown as Grade 1 in the statutory list of buildings of special architectural or historic interest compiled by the Secretary of State under section 54 of the Town and Country Planning Act 1971 (or under section 52 of the Town and Country Planning (Scotland) Act 1972, or Article 31 of the Planning (Northern Ireland) Order 1972) give written notice to the Planning Authority. Where the installation would detrimentally affect the character and appearance of the building and the Planning Authority indicates within 28 days of the giving of the notice that the installation should not take place, the Licensee may install the apparatus only if the Secretary of State so directs in writing, or with the agreement of the Planning Authority.
- 2.2 For the avoidance of doubt it is hereby declared that nothing in this Licence affects:
- (a) the statutory requirement that the consent of the Secretary of State shall be obtained before any work is carried out which will affect the site of an ancient monument scheduled under sections 1 and 2 of the Ancient Monuments and Archaeological Areas Act 1979 or section 7 of the Historic Monuments (Northern Ireland) Act 1971; or
 - (b) the obligation imposed on the Licensee by virtue of section 55 of the Town and Country Planning Act 1971 (or by section 53 of the Town and Country Planning (Scotland) Act 1972 or by Article 32 of the Planning (Northern Ireland) Order 1972) to obtain listed building consent for any works which affect the character of a listed building, or involve the demolition of any part of such a building.